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Div. of Oil, Gas & Mining

**Special-Status Plants Updates to
Red Leaf Resources'
Division of Oil, Gas and Mining
Notice of Intention**

Prepared for

Red Leaf Resources, Inc.

Prepared by

SWCA Environmental Consultants

October 2015

**SPECIAL-STATUS PLANTS UPDATES TO
RED LEAF RESOURCES' DIVISION OF OIL, GAS AND MINING
NOTICE OF INTENTION**

Prepared for

Red Leaf Resources, Inc.
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Attn: Jeff Hartley
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Prepared by

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October 30, 2015

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BACKGROUND

On September 9, 2015, the Utah Division of Oil, Gas and Mining (DOGM) requested that Red Leaf Resources (Red Leaf) provide additional information to Red Leaf's Notice of Intention (NOI) to Commence Large Mining Operations for the Southwest #1 mine site (M/047/0103) in Uintah County, Utah (Appendix A and Appendix B). Section 109.2 of the approved NOI addresses special-status plants, specifically Graham's and White River beardtongues (*Penstemon grahamii* and *P. scariosus* var. *albifluvis*, respectively). Because the *Conservation Agreement and Strategy for Graham's Beardtongue* (*Penstemon grahamii*) and *White River Beardtongue* (*P. scariosus* var. *albifluvis*), hereafter referred to as the Agreement or the Penstemon Conservation Agreement (Penstemon Conservation Team 2014), had not been developed at the time of NOI approval, DOGM has requested that Red Leaf update Section 109.2 to reflect the provisions and requirements under the Agreement. This document provides revisions to Section 109.2 based on DOGM's request and direction from the U.S. Fish and Wildlife Service (USFWS) Utah Ecological Field Services Office.

SECTION 109.2 REVISIONS

Section 109.2 Plant and Wildlife Habitats and Endangered Species

Plants

SPECIAL-STATUS PLANTS

Graham's and White River beardtongues are oil shale endemics that only occur in the Uinta Basin of Utah and the Piceance Basin of Colorado (USFWS 2013a, 2013b). In August 2013, the USFWS proposed to list Graham's beardtongue and White River beardtongue as threatened, and to designate approximately 82,873 acres as critical habitat under the Endangered Species Act (ESA) of 1973 (as amended) (USFWS 2013a, 2013b). Uintah County, the Utah School and Institutional Trust Lands Administration (SITLA), the Utah Public Lands Policy Coordinating Office (PLPCO), and several private mineral landowners joined the USFWS in the development of the Agreement. Both species are currently managed as BLM sensitive plant species (BLM 2008) on federal lands and according to terms of the Agreement on both federal and non-federal lands (see Table 4 of the Agreement).

The Agreement was finalized on July 22, 2014, and the USFWS withdrew its proposed listings on August 6, 2014 (USFWS 2014). The signatories to the Agreement are as follows:

Kevin S. Carter, Director
SITLA

Larry Crist, Field Supervisor
USFWS Utah Ecological Services Field Office

Susan Linner, Field Supervisor
USFWS Western Colorado Field Office

Gregory Sheehan, Director
Utah Division of Wildlife Resources

Kent Walter, Office Manager
BLM White River Field Office

Kathleen Clarke, Director
PLPCO

Jon D. Hill, Chair Rio Blanco County Commission
Rio Blanco County

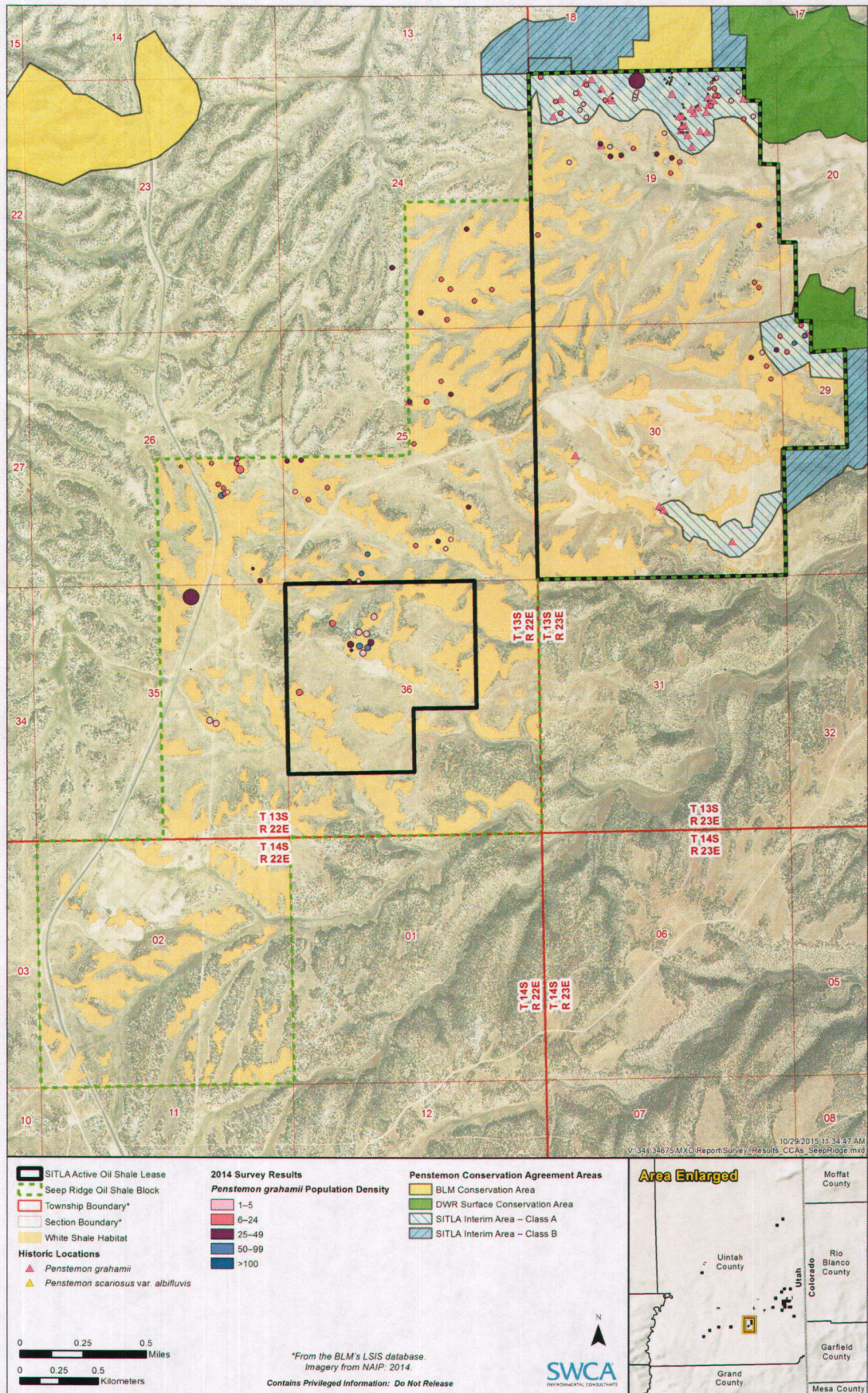
Mike McKee, Chair Uintah County Commission
Uintah County

Michael G. Stiewig, Acting District Manager
BLM Vernal Field Office

The purpose of the Agreement is to identify, avoid, minimize, and mitigate potential threats to Graham's and White River beardtongues and their habitats, and to promote the species' long-term persistence and thereby prevent the need for listing either species. A total of 44,373.4 acres are protected under the Agreement, and an additional 3,359.5 acres on private and state lands will receive interim protections as part of the Agreement. There are three categories of non-federally managed lands: conservation areas, interim conservation areas, and non-conservation areas (defined in Section 6.2 of the Agreement). From the date of Agreement finalization (July 22, 2014), conservation areas for Graham's beardtongue must be managed to limit new surface disturbance to 5% per landowner (2.5% for White River beardtongue) and plants must be avoided by 300 feet.

Red Leaf's Seep Ridge Block lease area is located in the south-central Uinta Basin east of Seep Ridge Road. The area is characterized by extensive pinyon-juniper woodlands and sagebrush shrublands interspersed with exposed shale barrens. In late 2013, the Red Leaf Early Production System (EPS) site was surveyed for potential Graham's and White River beardtongue habitat, and historic Graham's beardtongue locations were revisited. None of the historic locations at the EPS site currently exist (see Section 30 on Figure 1). In 2014, all potential shale habitats in the Seep Ridge Block were delineated, and clearance surveys were completed in May and June. No White River beardtongue was found on or near the lease area, but numerous Graham's beardtongue locations were identified (see Figure 1). The Agreement requires clearance surveys within 4 years of surface disturbance; however, spot checks may be required within 1 year of construction.

There are 184.1 acres of SITLA Interim Class A conservation areas in the Seep Ridge Block (see Figure 1). Class A areas are defined as *likely* for surface development and removal from conservation status within the 15-year term of the Agreement. These areas will be managed as designated conservation areas until surface-disturbing activities have been permitted. On SITLA lands, once a mine permit application for surface-mining activities is filed with DOGM, SITLA may elect to transfer their status in whole or in part to that of a non-conservation area.



The remainder of the Seep Ridge Block consists of non-conservation areas, which are designated as those areas in suitable habitat where surface-mining activities will occur unimpeded by the Agreement. However, voluntary conservation measures may take place on these lands and will be considered by the Penstemon Conservation Team in evaluating the conservation of the species. In October 2015, Red Leaf designated and prepared an experimental site to test the feasibility of Graham's beardtongue transplant methods and materials as part of a Utah Division of Wildlife Resources Endangered Species Mitigation Fund project. This effort and any other voluntary conservation measures will be reported back to the Penstemon Conservation Team on an annual basis.

All conservation measures and mitigation will tier to the Agreement and any future amendments and management plans under the Agreement. Specifically, management of interim conservation areas must adhere to conservation measures 5–7 in Table 4 of the Agreement, which require the following:

- Pre-site surveys prior to any new ground-disturbing activities to determine presence and locations of plants.
- Surface disturbance limited to 5% new surface disturbance for Graham's beardtongue.
- Avoidance of plants by 300 feet. Surface-disturbing activities may occur within 300 feet of plants if it benefits or reduces impacts to the species or habitat and is approved by the Penstemon Conservation Team.
- Where new surface disturbance will occur in a conservation area within 300 feet of plants, the project proponent will mitigate for impacts.
- In interim conservation areas and non-conservation areas with approved exploration or plan of operations permits, conservation actions are encouraged but voluntary. Good faith, voluntary actions could include avoidance, minimizing impacts to individual plants, seed collection, plant salvage and transplant, and experimental reclamation and restoration treatments.

LITERATURE CITED

- Bureau of Land Management (BLM). 2008. 6840-Special Status Species Management. Release 6-125. United States Department of the Interior, Bureau of Land Management. December 12, 2008.
- Penstemon Conservation Team. 2014. *Conservation Agreement and Strategy for Graham's Beardtongue* (*Penstemon grahamii*) *and White River Beardtongue* (*P. scariosus* var. *albifluvis*). Prepared for the State of Utah School and Institutional Trust Lands Administration; Uintah County, Utah; Utah Public Lands Coordination Office; Utah Division of Wildlife Resources; Rio Blanco County, Colorado; Bureau of Land Management; and U.S. Fish and Wildlife Service. Prepared by SWCA Environmental Consultants, Salt Lake City, Utah. July 22, 2014.
- U.S. Fish and Wildlife Service (USFWS). 2013a. Endangered and Threatened Wildlife and Plants; Threatened Species Status for Graham's Beardtongue (*Penstemon grahamii*) and White River Beardtongue (*Penstemon scariosus* var. *albifluvis*); Proposed Rule. 78 *Federal Register* 47590–47611.
- . 2013b. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Graham's Beardtongue (*Penstemon grahamii*) and White River Beardtongue (*Penstemon scariosus* var. *albifluvis*); Proposed Rule. 78 *Federal Register* 47832–47858.
- . 2014. Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rules To List Graham's Beardtongue (*Penstemon grahamii*) and White River Beardtongue (*Penstemon scariosus* var. *albifluvis*) and Designate Critical Habitat. 79 *Federal Register* 46041–46087.

APPENDIX A

September 9, 2015, Division of Oil, Gas and Mining Letter to Red Leaf Resources



GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

September 9, 2015

Jeff Hartley
Red Leaf Resources, Inc.
10808 S. River Front Parkway, Suite 200
South Jordan, Utah 84095

Subject: Division Directive to Provide Additional Updated Information to the Notice of Intention, Red Leaf Resources, Southwest #1, M/047/0103, Uintah County, Utah

Dear Mr. Hartley:

The Division of Oil, Gas and Mining thanks you and your staff for meeting with Division representatives on August 18, 2015, together with the Division of Wildlife Resources (DWR), and SWCA Environmental. There were good discussions about how to accomplish reclamation objectives at the Southwest #1 mine, and the Division representatives were impressed with the thoughts and efforts your company has put into this process.

Occasionally the Division will require additional information to update the existing Notice of Intention to Commence Large Mining Operations (Notice) in accordance with Rule R647-4-102. Section 109.2 of the approved Notice contains the narrative for special status plants. At the time of the initial permit filing, the Conservation Agreement and Strategy for Graham's Beardtongue and White River Beardtongue was not finalized, but since an agreement has now been finalized, and since the lessor, the School Institutional Trust Lands Administration (SITLA) is a signatory to the agreement, please update this information in the Notice. Outline any provisions of the agreement that SITLA requires of its lease holders and indicate any proposed voluntary areas your company is planning to designate as experimental planting locations. Secondly, please incorporate the new seed mix proposed by the DWR into your plan under Section 110.5. The intent of including this seed mix is to provide more big game habitat.

The Division requests that you provide this information by October 30, 2015. Thank you for keeping the plan current and we look forward to working with you on these types of projects.

Sincerely,

Paul B. Baker
Minerals Program Manager

PBB: aa: eb

Encl: Inspection Report 8/18/2015

cc: John Blake, SITLA (JBlake@utah.gov)

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APPENDIX B

Approved 2012 Notice of Intention Section 109.2 Special-Status Plants

109.2 Plant and Wildlife Habitats and Endangered Species

Plants

Special Status Plants

Graham's penstemon (*Penstemon grahamii*) was proposed for listing as a Threatened species under the Federal Endangered Species Act of 1973 (ESA) in 1975, 1990, and 2002. In 2006 it was removed from consideration for listing. On June 9, 2011 in response to a lawsuit it was again formally proposed for listing as Threatened (FR 2006). White River penstemon (*Penstemon scariousus* var. *albifluvis*) has been a Candidate for listing since 2004 (USFWS 2010).

Under the ESA, plants are protected on federal lands. Protection on state or private lands is afforded only if federal funds or permits are involved, if there is a state endangered species act that protects the species, or if there is a Conservation Agreement (CA) or similar document in place stating protection will be provided (USFS 1997). A CA was developed for the Graham's beardtongue and signed by USFWS, BLM, and Utah Department of Natural Resources (DNR), but was not signed by SITLA or Uintah County. There is no CA for the White River penstemon. Because SITLA was not a signatory of the CA, actions on SITLA land may arguably not be subject to the federal Endangered Species Act of 1973. Nevertheless, because DNR has signed the CA, Red Leaf commits to working with DOGM and other cooperating entities in support of their efforts to study and assess the potential for avoidance or mitigation of impacts to Graham's penstemon on its leases.

Although no individuals of either species were noted in two overview surveys in the southern half of Section 30 of this project (a full-blown survey was not completed – see memo in APPENDIX C), data available through USFWS indicates that Graham's penstemon has been found on the project area. It has not been confirmed that White River penstemon grows within the project area boundaries.

RLR commits to protecting populations of these plant species when their protection does not significantly affect direct mining activities. For example, the locations of "associated disturbances", such as haul roads, overburden stockpiles, or staging areas, will be adjusted whenever possible from the originally surveyed location to avoid disturbing these species. While most of the land surface will eventually be disturbed by mining, RLR recognizes the need for preservation of habitat to the maximum possible extent until such time as soil pre-stripping and overburden removal are scheduled to begin. RLR commits to surveying for these species within one year of disturbances planned within the areas with potential habitat during the plants' blooming period, to identify living populations. Whenever feasible, a buffer of up to 300 foot between proposed disturbance and living plant populations will be maintained. Individual populations will be marked with flagging, GPS'd, and cordoned off to prevent inadvertent disturbance to the plants. In addition, RLR will cooperate with DOGM and its cooperating partners in applying reasonable mitigation measures identified by the participants in the CA and affiliated entities.

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